

1 ADAM J. GUTRIDE (State Bar No. 181446)  
adam@gutridesafier.com  
2 SETH A. SAFIER (State Bar No. 197427)  
seth@gutridesafier.com  
3 KRISTEN G. SIMPLICIO (State Bar No. 263291)  
kristen@gutridesafier.com  
4 **GUTRIDE SAFIER LLP**  
100 Pine Street, Suite 1250  
5 San Francisco, California 94111  
Telephone: 415.271.6469  
6 Facsimile: 415.449.6469

7 HASSAN A. ZAVAREEI (State Bar No. 181547)  
hzavareei@tzlegal.com  
8 JEFFREY D. KALIEL (State Bar No. 238293)  
jkaliel@tzlegal.com  
9 ANDREW J. SILVER (*pro hac vice*)  
asilver@tzlegal.com  
10 **TYCKO & ZAVAREEI LLP**  
1828 L Street, N.W., Suite 1000  
11 Washington, DC 20036  
Telephone: (202) 973-0900  
12 Facsimile: (202) 973-0950

13 Attorneys for Plaintiff and the Class

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

17 ROHINI KUMAR, individual, on behalf of  
18 herself, the general public and those similarly  
situated

19 Plaintiff,

20 v.  
21

22 SALOV NORTH AMERICA CORPORATION,  
23 Defendant.  
24

CASE NO. 14-cv-2411 (YGR)

**DECLARATION OF ADAM J. GUTRIDE  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
APPLICATION FOR ATTORNEYS'  
FEES, COSTS AND INCENTIVE  
AWARDS**

Date: May 30, 2017

Time: 2:00 p.m.

Courtroom 1, Fourth Floor

Judge: Hon. Yvonne Gonzalez Rogers

25  
26  
27  
28

1 I, Adam Gutride, declare as follows:

2 1. I am a member of this Court and attorney of record for Plaintiff Rohini Kumar in  
3 this action.

4 2. I am a partner in Gutride Safier LLP (“GSLLP” or “Firm”), which has been  
5 appointed Class Counsel in the above-captioned matter. The information below is stated based on  
6 personal knowledge. I am competent to testify to the facts set forth below, and if called as a  
7 witness and placed under oath, I would testify to those facts.

8 3. I make this Declaration in support of Plaintiff’s motion for final approval and  
9 attorneys’ fees and costs and incentive awards (“Motion”). In that regard, I discuss, in the  
10 following order: (a) the history of this litigation, which includes a summary description of the legal  
11 services provided by GSLLP in this litigation to date; (b) the risks borne by GSLLP; (c) the time,  
12 rate, expenses, and other data underlying the Motion; and (d) GSLLP’s continuing obligations in  
13 this litigation and under the Settlement Agreement.

14 **A. History of the Litigation.**

15 4. On March 21, 2014, Plaintiff filed a complaint against Defendant in the above-  
16 captioned case, in which Plaintiff alleged that Defendant had deceptively marketed and sold its  
17 Filippo Berio brand of olive oil with the representation “Imported from Italy” on the front label,  
18 although the back label stated that most of the oil was extracted in countries other than Italy from  
19 olives grown in those other countries. Plaintiff further alleged that, by marketing the Products as  
20 “Imported from Italy,” Defendant caused people to purchase the Products who would not  
21 otherwise have done so, and that the Products were sold at a higher retail price than they would  
22 have been sold without the misstatements.

23 5. GSLLP drafted and filed the Complaint and caused it to be served. Prior to doing  
24 so, GSLLP spent time communicating with Plaintiff Kumar concerning her claims, gathering her  
25 documentation, and negotiating with her a retainer agreement. GSLLP also undertook extensive  
26 pre-filing investigation, including without limitation, researching, tracking, and analyzing  
27 Defendant’s marketing, advertising, and product packaging, and reviewing Defendant’s websites,  
28 press releases, public filings, and online documents. GSLLP spent additional time analyzing Food

1 and Drug Administration (“FDA”) regulations and Customs and Border Patrol (“CBP”)  
2 regulations, and the California Health and Safety Code. GSLLP also researched and analyzed  
3 related state regulations. GSLLP also conducted research regarding potential federal preemption of  
4 Plaintiff’s claims. Throughout this litigation, GSLLP has continued to monitor, research, and  
5 review such materials.

6         6.         GSLLP also negotiated a co-counsel arrangement with Tycko & Zavareei (“TZ”),  
7 which had experience prosecuting similar olive oil litigation in the District of Columbia.  
8 Throughout the litigation, GSLLP worked closely with TZ to formulate case strategy. Work was  
9 divided between the firms to avoid duplication—for example, the TZ firm was assigned to be lead  
10 on taking depositions of fact witnesses, while my firm was lead for dealing with the expert  
11 witnesses. Document review was apportioned between the firms and only documents identified as  
12 by a reviewer as “hot documents” were shared. Similarly, in connection with legal research and  
13 brief writing, one firm was assigned to draft all (or certain sections) of a brief, while the other  
14 provided only suggestions and edits.

15         7.         After filing the Complaint, Defendant filed a motion to dismiss. GSLLP reviewed  
16 Defendant’s arguments and researched to draft the opposition to that motion, which was filed in  
17 August of 2014. I appeared and argued at the hearing on the motion to dismiss.

18         8.         In November of 2015, Defendant filed a motion to stay the proceedings in this case  
19 pending the resolution of purportedly related matters pending on appeal in the Ninth Circuit.  
20 GSLLP reviewed Defendant’s arguments on that motion and participated in the drafting and filing  
21 of Plaintiff’s opposition in December of 2015.

22         9.         GSLLP drafted and filed numerous case management statements in this case,  
23 including in August 2014, November 2014, January 2015, and February 2015. GSLLP  
24 additionally participated in the filing of case management-related stipulations in September 2015,  
25 October 2015, December 2015, February 2016, May 2016, July 2016, August 2016, September  
26 2016, and November 2016. GSLLP also attended case management conferences in this case.

27         10.        Throughout this case, GSLLP participated in the discovery efforts, including  
28 drafting and serving requests on Defendant and third parties. GSLLP also met-and-conferred with

1 Defendant's counsel regarding the scope of discovery, the sufficiency of discovery responses and  
2 production, the retention of electronic documents, Defendant's searches for electronically stored  
3 information, the terms and scope of a stipulated protective order, and the timing of production.

4 11. GSLLP also took part in briefing discovery disputes in this matter regarding the  
5 timing of discovery, Defendant's request to take foreign discovery from an Australian olive oil  
6 testing laboratory, and Plaintiff's request to take foreign discovery from Defendant's Italian parent  
7 company.

8 12. In total, over 30,000 pages of documents were produced in this case, and GSLLP  
9 assisted in the document review efforts in this case.

10 13. GSLLP also took the deposition of Defendant's expert economics witness,  
11 defended the deposition of Plaintiff, and defended the deposition of Plaintiff's expert economics  
12 witness.

13 14. After obtaining significant discovery from Defendant in this case, GSLLP  
14 participated in conducting research for, drafting, and filing Plaintiff's Motion for Class  
15 Certification, which was filed in January of 2016. Upon receiving Defendant's opposition to that  
16 motion, GSLLP participated in the research and drafting of Plaintiff's reply memorandum, which  
17 was filed in May of 2016. I appeared and argued at the hearing on this motion on May 24, 2016.  
18 After the class certification motion was submitted, the Court asked for further declarations  
19 regarding Class Counsel's qualifications and on the pending motions to seal portions of the  
20 briefing, on which GSLLP participated in the drafting and filing.

21 15. After the Court granted Plaintiff's Motion for Class Certification, the parties started  
22 to discuss the possibilities of mediation and settlement in August 2016 (Dkt. 130). I drafted the  
23 initial proposals, and then on November 8, 2016, GSLLP participated in the drafting of a  
24 comprehensive mediation statement and attended an all-day mediation (10+ hours) with Randy  
25 Wulff of Wulff Quinby & Sochynsky, an independent, well respected, and experienced mediator,  
26 in Oakland, California. The parties made significant progress during the mediation, and following  
27 it, GSLLP took the lead on negotiating and drafting the Settlement Agreement along with  
28 corresponding documents, including claim forms, summary notice, and long form notice.

1           16.     Because the parties were able to arrive at a nationwide settlement, GSLLP  
2 participated in the drafting and filing of an Amended Complaint in this matter, asserted nationwide  
3 claims consistent with the nationwide settlement class contemplated by the Settlement Agreement.

4           17.     After the parties entered into the Settlement Agreement, GSLLP participated in the  
5 drafting and filing of the motion for preliminary approval of the settlement and its supporting  
6 documents. I appeared and argued at the hearing on this motion.

7           18.     After filing the motion for preliminary approval of the settlement, GSLLP  
8 supervised the work of the claims administrator in this matter. For example, I tested the operation  
9 of the settlement website, and I and my colleagues at GSLLP have corresponded with the claims  
10 administrator regarding the notice and claims process, including regarding inquiries from class  
11 members. GSLLP will continue to participate in these efforts throughout and following the claims  
12 process.

13           19.     GSLLP also participated in the drafting and filing of the instant motion for final  
14 approval of the settlement, and I will appear at the hearing on that motion. Among other things, I  
15 worked with Plaintiff's economics expert regarding his declaration in support of final approval.

16           20.     GSLLP's work in this case is delineated in even greater detail in the  
17 contemporaneous time entries attached to this Declaration, as discussed in Section C.

18           21.     Should any objections to the settlement be filed prior to the hearing on final  
19 approval, GSLLP will research and respond to those objections by, if necessary, filing oppositions  
20 to them and/or a reply memorandum in support of the motion for final approval of the settlement.

21           22.     After engaging in all of the aforementioned tasks, as a partner with GSLLP, I am in  
22 a unique position to evaluate this Settlement. Indeed, in advising the Representative Plaintiff  
23 whether or not to enter into the Settlement Agreement, I was very cognizant of the risks involved  
24 in protracted litigation. I was also cognizant of Defendant's size and financial resources.

25           23.     When considering the risks and costs associated with proceeding to trial against the  
26 nature of the benefit that was being offered by Defendant, it was clear that the Settlement is in the  
27 best interests of the class. Indeed, with this Settlement, Plaintiff has achieved her desired goal in  
28 this litigation—i.e., obtaining for class members cash refunds and changes to Defendant's labeling

1 practices. Based on my evaluation of the facts and legal issues presented, I believe that the  
 2 settlement is fair, adequate, and reasonable. Indeed, I believe this is an excellent settlement.

3 24. Plaintiff Kumar is requesting an incentive award of \$2,500. Plaintiff Kumar took on  
 4 the risk of the possibility of bearing Defendant's costs in a losing effort. She worked with counsel  
 5 to provide information and respond to discovery throughout the litigation. As many of  
 6 Defendant's arguments centered on the standing and typicality of Ms. Kumar, the amount of her  
 7 work in this case was greater than in the average consumer case. Kumar conducted lengthy  
 8 searches of her personal records. She also spent a good deal of time preparing for and being  
 9 deposed.

10 25. Plaintiff has been actively involved in the litigation prior to and after this  
 11 Settlement. In my opinion, Plaintiff's participation in this litigation has been exemplary.

12 **B. The Risks Borne By GSLLP.**

13 26. In accepting this case, GSLLP bore considerable risk. GSLLP took this case on a  
 14 fully contingent basis, meaning that we were not paid for any of our time, and that we paid all  
 15 costs and out of pocket expenses without any reimbursement to date. From the outset, GSLLP  
 16 recognized that it would be contributing a substantial amount of time and advancing significant  
 17 costs in prosecuting a nationwide class action, with no guarantee of compensation or recovery, in  
 18 the hopes of prevailing against a well-funded defense. During the course of the litigation, GSLLP  
 19 turned away other cases due to its involvement with this matter. Among these were cases that were  
 20 subsequently filed by other firms.

21 27. Because Defendant was represented by a large, highly-skilled and well-resourced  
 22 litigation firm, there was increased risk that Plaintiffs would receive a verdict for the Defense after  
 23 a prolonged trial.

24 **C. Lodestar and Expenses for GSLLP**

25 28. A true and correct copy of the firm resume of GSLLP was submitted as part of the  
 26 class certification briefing the Court reviewed in certifying a California class. (Dkt. 85-9.)

27 29. GSLLP has worked on two other matters related to olive oil marketing practices  
 28 that contain allegations similar to those in this case. GSLLP has maintained separate billing

records for this case under the case name “Salov” and for each of the two other cases. In addition, because certain tasks in the three matters have sometimes overlapped, GSLLP has maintained separate billing records under the case name “OliveOil” for general work performed related to all three matters. Attached hereto as Exhibit 1 is a true and correct copy of the contemporaneous billing records entered and maintained by GSLLP under the case name “Salov” for the work specific to this case. Attached hereto as Exhibit 2 is a true and correct copy of the contemporaneous billing records entered and maintained by GSLLP under the case name “OliveOil” for the work that more generally applies to all three olive oil cases. With respect to the “OliveOil” work (Exhibit 2), GSLLP is only seeking to recover for one-third of the hours, or 123 hours of time.

30. Based on the time records of GSLLP as described in the preceding paragraph, GSLLP has spent approximately 1103.5 hours prosecuting this litigation through February 28, 2017.<sup>1</sup> The total number of hours, as well as the lodestar computed at our 2017 rates, is as shown in the following table:

Attorney (Position)	Hours	Rate	Total
Adam J. Gutride	460.6	\$950	437,570
Seth A. Safier	258.4	\$925	\$239,020
Todd Kennedy	19	\$850	\$16,150
Kristen Simplicio	311.8	\$775	\$241,645
Marie McCrary	20.9	\$750	\$15,675
Matt McCrary	32.8	\$725	\$23,780
<b>TOTAL</b>	1103.5		\$973,840.00

31. The hourly rates shown for the attorneys at GSLLP are the same as the regular rates charged in 2017 for their services in other litigation.

32. I understand my co-counsel utilizes the Laffey Matrix, which provides market rates for attorneys working in the Washington, D.C., and Baltimore areas, and is discussed in Paragraph

<sup>1</sup> Time for March 2017 has not yet been entered by some timekeepers, so March time is omitted from these totals. GSLLP will update its lodestar and costs in a reply declaration, as necessary.



26 of the declaration of Hassan Zavareii. Utilizing that matrix, GSLLP's lodestar computed using the matrix's 2017 rates, is shown in the following table:

Attorney (Position)	Hours	Rate	Total
Adam J. Gutride	460.6	\$826	380,455.60
Seth A. Safier	258.4	\$685	177,004.00
Todd Kennedy	19	\$685	13,105.00
Kristen Simplicio	311.8	\$608	189,574.40
Marie McCrary	20.9	\$608	12,707.20
Matt McCrary	32.8	\$608	19,942.40
<b>TOTAL</b>	1103.5		\$792,698.60

33. On February 24, 2016, Judge Peter Kirwan of the Santa Clara Superior Court approved rates GSLLP's 2015 rates of \$825 for me, \$800 for Seth Safier, and \$700 for Todd Kennedy, in *Mackinnon v. IMVU, Inc.* Case No. 111 CV 193767 (County of Santa Clara). On February 20, 2015, Magistrate Judge Beeler, approved GSLLP's 2014 rates of \$725 per hour for Seth Safier and \$750 for me, and \$700 for Jay Kuo, in *Miller v. Ghirardelli Chocolate Company*, Case No. 12-cv-4936 (N.D. Cal.). On February 20, 2014, Judge Ernest Goldsmith of the San Francisco Superior Court approved GSLLP's 2013 rates of \$700 per hour for me and \$675 for Seth Safier in *Haven v. Betz & Sons, Inc., et al*, Case No. 438719. On December 11, 2013, Judge Claudia Wilken approved GSLLP's 2013 rates of \$700 per hour for me, \$675 for Seth Safier, \$625 for Jay Kuo and \$450 for Kristen Simplicio, in *Rainbow Business Solutions, et al v. Merchant Services, et al*, Case No. CV 10-01993 CW (N.D. Cal.). On August 1, 2013, Judge Dale S. Fischer approved GSLLP's 2013 rates of \$700 per hour for me, \$675 for Seth Safier, and \$450 for Kristen Simplicio, in *Mancini, et al v Ticketmaster, et al*, Case No. 07-cv-01459-DSF-JTL (C.D. Cal.). On June 1, 2012, Judge Jeffrey White approved GSLLP's 2012 rates of \$650 per hour for me, \$625 for Seth Safier and \$400 for Kristen Simplicio, in *Chavez v. Blue Sky Beverage, et al*, Case No. 06-cv-6609 (N.D. Cal.). On February 14, 2012, Chief Judge James Ware approved GSLLP's 2011



1 rates of \$625 per hour for me, \$600 for Seth Safier, and \$375 for Kristen Simplicio, in *Embry v.*  
 2 *Acer America Corporation*, Case No. 5:09-cv-1808 (ND. Cal.). On November 30, 2011, Judge  
 3 James F. Holderman approved GSLLP's 2010 rates of \$600 per hour for me and \$575 per hour for  
 4 Seth Safier in *In Re: Kentucky Grilled Chicken Coupon Marketing & Sales Practices Litigation*,  
 5 Case No. 1:09-cv-07670 (ND. Ill.). On November 22, 2011, Judge John Munter approved  
 6 GSLLP's 2011 rates of \$625 per hour for me, \$600 per hour for Seth Safier, and \$375 per hour for  
 7 Kristen Simplicio in *Gauss v. Millennium Products, Inc.*, Case No. CGC-10-503347. On  
 8 December 24, 2009, GSLLP's 2009 rates of \$550 for me and \$525 for Seth Safier were approved  
 9 by Judge Richard A. Kramer in *Deaton et al v. Hotwire*, Case Number CGC-05- 437631. On  
 10 August 20, 2008, rates of \$525 for me \$500 for Seth Safier were approved by Judge Charlotte  
 11 Walter Woolard in *Nelsen v. PeoplePC*, Case Number 07-460240. On April 30, 2008, rates of  
 12 \$475 for me and \$450 for Seth Safier were approved by Judge Charlotte Walter Woolard in  
 13 *Howard et al. v. Betz & Sons*, Case Number CGC-03-422529. On April 14, 2008, rates of \$450 for  
 14 me and \$425 for Seth Safier were approved by Judge Mary E. Wiss in *Cho v. Seagate*, Case  
 15 Number CGC-06-453195. On February 5, 2008, rates of \$475 for me and \$450 for Seth Safier  
 16 were approved in by Judge William Alsup in *Siemers v. Wells Fargo*, Case No. 3:05-cv-04518-  
 17 WHA (N.D. Cal.). On November 20, 2006, rates of \$450 for me and \$425 for Seth Safier were  
 18 approved by Judge Richard A Kramer in *Vroegh v. Dane Electric et al.*, Case No. CGC-04-  
 19 428953.

20 34. I am a 1994 graduate from Yale Law School. Seth Safier is a 1998 graduate from  
 21 Harvard Law School. Ms. Simplicio is 2007 graduate of the American University, Washington  
 22 College of Law. Ms. McCrary is a 2008 graduate of New York University Law School.

23 35. Mr. Gutride and Mr. Safier were previously attorneys at the law firm of Orrick  
 24 Herrington & Sutcliffe. It is my understanding that attorneys at that firms in the litigation  
 25 departments, with the same number of years of experience as myself and Mr. Safier are currently  
 26 billing at hourly rates in excess of \$1000 for law school graduates from 1994 and 1998. I also  
 27 believe the rates paid by Defendant to its firm in this case meets or exceeds the rates requested for  
 28 GSLLP. I believe that my firm's hourly rates are below market for attorneys with similar

1 backgrounds and experience.

2 36. Expenses are accounted for and billed separately and are not duplicated in my  
3 professional billing rate. GSLLP has not received reimbursement for expenses incurred in  
4 connection with this litigation. As of April 10, 2017, my firm incurred a total of \$65,902.06 in  
5 unreimbursed actual third-party expenses in connection with the prosecution of these cases. The  
6 actual expenses incurred in the prosecution of these cases are reflected on the computerized  
7 accounting records of my firm prepared by bookkeeping staff, based on receipts and check  
8 records, and accurately reflect all actual expenses incurred. Some of the expenses included below  
9 are known to us but yet to be invoiced or have been invoiced but not yet paid. The expenses that  
10 have yet to be invoiced, for example, include expenses for courtesy copies of this Motion and  
11 expenses associated with traveling to the final approval hearing and are estimated based on my  
12 experience. The expenses are as follows:

Expense Category	Amount
Copying, Duplication, Printing (E101)	
Arbitrators/Mediators (E121)	\$8,500
Court Fees (E112)	\$400
Delivery Svcs & Msgs (E107)	3,013.50
Deposition Transcripts (E115)	4,269.05
Experts (E119)	39,296.30
Litigation Sup Vendors (E118) <sup>2</sup>	8,098.34
Local Travel (E109) <sup>3</sup>	81.40
Meals (E111)	221.40
Online Research (E106)	191.64
Other (E124) <sup>4</sup>	86.18

25  
26 <sup>2</sup> Logik Systems is a document review platform.

27 <sup>3</sup> Includes taxis, and parking, tolls, and mileage for automobiles owned by GSLLP timekeepers.

28 <sup>4</sup> Includes costs attributable to this case for the purchase of the product for testing, the purchase of a book about the olive oil industry, bookkeeping services, online fax, and data hosting.

1	Out-of-Town Travel (E110)	1,162.58
2	Outside Printing (E102)	261.60
3	Postage (E108)	220.07
4	<b>TOTAL</b>	<b>\$65,902.06</b>

5 **D. Plaintiffs' Counsel Continuing Obligations to Class Members**

6 37. Following this Court granting preliminary approval to the Settlement, Class  
7 Counsel established standardized procedures to ensure that all inquiries from Class Members were  
8 timely and accurately handled. I am not aware of any feedback from class members that would  
9 suggest that the process is onerous or complicated. Class Counsel also worked the Claim  
10 Administrator to assure that settlement website functioned properly, was easy to use and properly  
11 designed. Class Counsel also worked with the Claims Administrator to assure that notice was  
12 disseminated in accordance with the terms of the Settlement Agreement. I received weekly updates  
13 from the Claims Administrator regarding the administration of the settlement. GSLLP will  
14 continue in this capacity should the settlement be finally approved. GSLLP will prepare for and  
15 appear at the fairness hearing. If the settlement is approved and fees awarded, GSLLP also will  
16 oppose any appeals that may be filed. Based on my experience with class actions, I additionally  
17 anticipate that there will be another 50-75 hours of work before this Litigation is entirely complete  
18 and an estimated 175-250 hours if this Court's judgment is appealed.

19  
20 This declaration was executed this 11th day of April, 2017, at Berkeley, California. I state  
21 the foregoing under penalty of perjury under the laws of the United States.

22 /s/ Adam Gutride  
23 Adam Gutride, Esq.